

BEFORE THE  
U.S. DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

In the Matter of

**2005/2006 U.S.-CHINA AIR SERVICES  
CASE AND DESIGNATIONS**

Docket OST-2004-19077

**Answer Of Federal Express Corporation To  
Petition Of American Airlines, Inc. For Reconsideration**

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September 14, 2004

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Federal Express Corporation ("FedEx Express") respectfully submits this Answer to American Airlines, Inc.'s Petition for Reconsideration (the "Petition"). American seeks reconsideration or clarification of five items: (1) the service proposal requirement; (2) the traffic forecast requirement; (3) the confidentiality of the DOT Information Response; (4) the form of authority to be granted; and (5) the exhibit exchange list. FedEx Express supports American's position on items 1 and 3, while opposing it on item 5. FedEx Express has no views on items 2 and 4.

**Item 1: The Service Proposal Requirement.** American asks that combination carriers provide complete service proposals by next week, September 22, 2004. FedEx Express believes that this position should apply equally to all-cargo applicants, whose applications should also contain complete service proposals, including routings, frequencies, and equipment types. However, FedEx Express disagrees with American's request to the extent that it seeks proposed departure and arrival times by September 22. It would be unreasonably burdensome and premature to require applicants to have their

proposals refined to that level of detail just 19 days after the Department's request for them. Such refinement requires review of the complex factors involved in integrating a new service into a network. Moreover, it would be premature since other applicants do not need this level of detail for a given service proposal until they are analyzing the proposal for rebuttal purposes.

FedEx Express agrees with American that the parties will be able to develop the strongest evidentiary record if they have as complete an understanding of the desires of each carrier as possible. In addition, given the expedited nature of the proceeding, the Department should encourage a full and early sharing of information. This would allow the Department, *e.g.*, to alert applicants to any inconsistencies of their proposals with bilateral requirements. Moreover, it would preserve fairness among applicants by precluding applicants from changing their proposals after reviewing those of others.

**Item 3.** FedEx Express is aware of the staff requirement cited by American that parties submit confidentiality affidavits before reviewing the DOT T-100 data, and supports the requirement.<sup>1</sup> Like American, FedEx Express would be concerned about an informal rule that unnecessarily increases the complexity of the case by requiring the submission of exhibit material under seal. Incorporation of T-100 data into an exhibit is

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<sup>1</sup> FedEx Express urges the Department to make such a requirement explicit and to clarify the terms of the required affidavit.

sufficient to protect the confidentiality of any submitter, so long as all parties act in good faith and do not include raw, carrier-specific data.

**Item 5.** FedEx Express opposes American's position on Item 5, which could impose undue burdens and unnecessary costs upon the parties with respect to the service of exhibits. Specifically, FedEx Express opposes American's request that the Department require the parties to (1) circulate multiple printed copies of exhibits to each party according to the preferences of the receiving party and (2) provide same-day hand delivery service of the printed copies of exhibits to addressees in Washington, D.C. Instead, FedEx Express suggests that each party serve one copy of the printed exhibits to each party's designated recipient via overnight courier. Any additional copies requested by the parties should be served, as a courtesy, either via CD by overnight courier or electronic mail.

FedEx Express has become increasingly concerned about regulatory burdens being imposed by other applicants to carrier-selection cases. These extra burdens are being imposed at a time when the Department itself is cutting the burden it places on private parties, which FedEx Express applauds. Indeed, in this large, complex case, American's suggestion could impose such a burden on applicants that it could discourage their participation in such cases, rather than encourage new entry.

First, American states that the Department should not permit parties to impose on other parties the task of producing printed copies of the exhibits from electronic

submissions. However, under the Department's rules, service via electronic format, including facsimile and electronic mail, are two of the eight authorized service methods.<sup>2</sup>

Second, American seeks multiple printed copies of the exhibits to be served according to the preference of each party. However, under the Department's rules of procedure, service upon a party may be made upon, *inter alia*, a party or person or "any attorney of record for the party."<sup>3</sup> The Department's rule does not require service of multiple printed copies of filings upon all attorneys of record retained or employed by a party and whomever else the party decides it wants to receive a copy of the filing.

Third, the request posed by American results in an exercise that is unduly burdensome and costly. The Department's current service list for Docket OST-2004-19077 lists approximately 30 individuals representing approximately 40 companies. Under American's proposal to allow carriers to make unilateral decisions about the number of copies they want, the number of printed copies could blossom to 100 or more. This volume of exhibits would be too costly and the preparation of the same would be too time-consuming to ensure service by the dates set forth in the Instituting Order.<sup>4</sup> Therefore, the cost and preparation of any additional copies desired by the parties should

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<sup>2</sup> 14 C.F.R. § 302.7(b).

<sup>3</sup> 14 C.F.R. § 302.7(c).

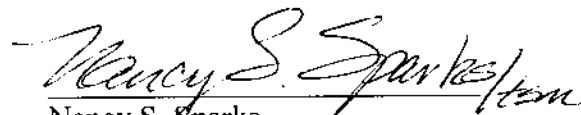
<sup>4</sup> Hand delivery of these multiple printed copies of exhibits to recipients in the District of Columbia would be too unwieldy to complete the same day as the actual filing.

be the responsibility of the party making the request. In addition, and perhaps most importantly, this requirement to serve multiple printed copies is simply unnecessary since the exhibits will be available for downloading from the Department's Docket Management System usually within 24 hours of filing or less.

### CONCLUSION

For the reasons stated above, American's petition with respect to Item 1 (complete service proposals) should be granted and applied to all-cargo applicants. Item 3, confidential treatment of T-100 data, should be clarified. Item 5, its proposed Exhibit Exchange request, should be denied to minimize the burden on parties in this expedited proceeding.

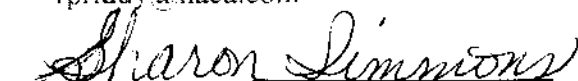
Respectfully submitted,

  
Nancy S. Sparks  
Managing Director  
Regulatory and Industry Affairs

## CERTIFICATE OF SERVICE

I hereby certify that the Answer Of Federal Express Corporation To Petition Of American Airlines, Inc. For Reconsideration has been served by e-mail this 14<sup>th</sup> day of September, 2004, on the following:

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